

**PHILIP MORRIS COMPANIES INC. INTER-OFFICE CORRESPONDENCE**  
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**Date:** February 22, 2000  
**To:** Steve Parrish  
**From:** Beverly McKittrick  
**Re :** FEDERAL LAWSUIT

**SITUATION ANALYSIS**

The federal government filed suit against the tobacco industry on September 22, 1999 for reimbursement of alleged smoking-related health-care costs the government incurred under the Medicare and other federal health-care programs. Philip Morris, including FGA, Legal, Communications, and the FAT and MAN teams, spent a great deal of time during 1999 educating Capitol Hill, the press, and the business and public policy communities as to the lack of merit of the lawsuit. This effort was reflected in the overwhelming press skepticism of, and, in some cases, downright opposition to the lawsuit. It was evidenced by the opposition of the business community and the grassroots opposition generated by the public policy community. Finally, these education efforts propelled the following federal legislative achievements:

- The Justice Department's ("DOJ") budget, enacted in mid-November, did not contain the requested \$20 million to prosecute the lawsuit. The Congress held firm against the increasingly vocal and visible demands of the Administration to fund the lawsuit. Moreover, language in the Statement of Managers (accompanying the Commerce, Justice, State appropriations Conference Report) makes clear that DOJ cannot spend more than \$1.8 million to prosecute the suit—the same as was spent during FY 99—without seeking a reprogramming of funds.
- No Florida-style legislation to provide or enhance the legal grounds for the lawsuit was introduced or offered as an amendment (although there were draft proposals under consideration).
- Sen. Mitch McConnell (R-KY) introduced legislation, the "Litigation Fairness Act," (cosponsored by Judiciary Committee Orrin Hatch (R-UT)), to prevent government plaintiffs from having greater rights than individual plaintiffs in the same position (i.e., governments can proceed only through subrogation). While the bill is not retroactive and therefore cannot block the federal suit against the industry, it does serve to highlight the absurdity of the federal lawsuit and has provided a "hook" for congressional hearings on the issue of government-sponsored lawsuits. (Rep. Roger Wicker (R-MS) introduced the House companion measure.)

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## STRATEGIC GOALS AND TACTICS

### Goal One:

Block additional funding in DOJ's FY2001 budget for the lawsuit by securing inclusion of the same Report language. The ultimate purposes are to 1) choke DOJ's ability to prosecute the suit in a grand fashion and 2) again put Congress on record in opposition.

### Tactics:

- Update the briefing package to be used on the Hill and with the media.
- Meet with appropriators on the Commerce-Justice-State subcommittees (and full Committees) to remind them of the lawsuit's grave flaws, DOJ's competing priorities, and the general nonchalant attitude of DOJ's leadership about blatant violations of the law committed by the Clinton/Gore Administration.
- Educate supportive members of Congress (such as tobacco-state members and conservatives), the business coalition (led by Chamber of Commerce), public policy allies, friendly columnists, and participants in the FAT/MAN networks on the flaws in DOJ's case as exposed by the industry's Motion to Dismiss. (This is underway.)
- Generate letters from congressional, business, and public policy groups in opposition to funding the lawsuit.

### Goal Two:

Work the oversight process to ensure DOJ complies with the reprogramming requirements, and secure congressional refusal to allow reprogramming. (In the final analysis, DOJ cannot be forced to adhere to congressional wishes unless a law is enacted prohibiting the expenditure of funds for this purpose. It is exceedingly unlikely that such a law would be enacted. DOJ's refusal to comply, however, could be used to fan congressional ire and public disgust.)

### Tactics:

- Work with Sen. McConnell (a member of the Commerce, Justice, State appropriations subcommittee), Rep. Hal Rogers (R-KY) (chairman of the House C-J-S subcommittee) and Rep. Charles Taylor (R-NC) to determine when DOJ submits a reprogramming request.

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- Work with Sen. McConnell's and Rep. Rogers' offices to determine whether DOJ is spending more on the lawsuit than Congress provided. This will require dogged pursuit via letter, and possibly a hearing. This is especially important if DOJ does not submit a reprogramming request.

### Goal Three:

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Continue congressional hearings on the problem of government-sponsored litigation. Expand to other committees, such as House Judiciary and Senate Foreign Relations (international suits).

Tactics:

- Work closely with Sen. McConnell and Rep. Wicker (R-MS) to continue these hearings, which can be billed as exploring their legislation (the "Litigation Fairness Act").
- Seek input and support from key business and public policy allies.

**Goal Four:**

Promote passage of McConnell/Wicker bill. Explore pros and cons of attempting to amend it to be retroactive. Even if bill is not retroactive, spotlighting it will continue to highlight the absurdity of the federal tobacco suit.

Tactics:

- Help secure cosponsors (underway).
- Explore with public policy allies whether grassroots support for passage of the bill can be generated, e.g. "Government CANNOT be a "super plaintiff."
- Work quietly with interested congressional offices to provide materials for briefings and hearings.

**Goal Five:**

Block legislation to enhance DOJ's cause of action against the industry.

Tactics:

- Work with congressional allies to ensure that Sen. Jack Reed's (R-RI) lead paint bill does not reach the Senate floor, as that would be an ideal vehicle for a tobacco amendment.

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- Keep key congressional appropriations allies informed and alerted to watch for potential amendments. Re-distribute talking points, keep watch on House Rules Committee activity, and ensure that an ally is prepared to engage in appropriate procedural maneuvers on the Senate floor.

**Goal Six:**

Ensure that opinion elites continue to be aware of the absurdities of the lawsuit; ensure that ally-activists continue to agitate against it.

Tactics:

- Consider PM briefings of reporters around key events, e.g. the government's response to the industry's motion to dismiss on February 25.

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- Consider similar briefing for business and public policy allies. Continue to provide materials and ideas to allies.

#### **TIMELINE: Federal Lawsuit and Appropriations Process**

9/22/99	DOJ files lawsuit against the industry
12/27/99	Industry files motion to dismiss
2/4/00	<i>Administration budget submitted</i>
2/25/00	Government response is due
3/15/00	<i>House and Senate budget action</i>
3/27/00	Industry reply is due
5/15/00	Oral argument scheduled
6/15/00	<i>Appropriations process underway</i>

Judge could render decision any time after May 15. Appropriations process is likely to conclude in mid-September.

#### **RESOURCES NEEDED**

- Polling on the lawsuit should continue to be done regularly.
- The FAT team will be needed to lobby Members in their districts.
- The MAN group will need to continually brief the media (especially around key events, to keep their level of opposition relatively high).
- PM in-house legal team should be available to brief key Members.

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